

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**SOTERO GOMEZ, *Applicant***

**vs.**

**COUNTY OF KERN, permissibly self-insured, *Defendants***

**Adjudication Numbers: ADJ13812292, ADJ14358668  
Bakersfield District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Rulings and Orders Admitting Evidence and Joint Findings of Fact, Discovery Order, and Opinion on Decision issued by the presiding workers' compensation administrative law judge (PWCJ) on November 26, 2025. The PWCJ found, in relevant part, that on August 24, 2019, while employed by defendant as a maintenance worker, applicant sustained a specific industrial injury to his left hip, cervical spine, thoracic spine, left shoulder, left elbow, and left knee and claims to have sustained injury to his upper back, right knee, and right shoulder. Applicant was further found to have sustained a specific industrial injury to his lower back and abdomen on January 2, 2020, while employed by defendant as a maintenance worker. The PWCJ issued a ruling and order to not receive into evidence, the Doctor's First Report of Occupational Injury or Illness (Doctor's First Report) by Kayvon Yadidi, D.O. dated June 22, 2018. The PWCJ further issued Discovery Orders denying defendant's petition for a discovery order requiring applicant to execute a social security release and granting in part, defendant's petition for a discovery order authorizing a further deposition of the applicant only to the extent of applicant's activities of daily living and their interactions as well as changes in applicant's physical condition since the May 22, 2023 deposition.

Defendant requests reconsideration of the Discovery Order #1, wherein the PWCJ denied defendant's petition for a discovery order requiring applicant execute defendant's social security release. Defendant contends Discovery Order #1 is not supported by the law. Defendant further

contends that the PWCJ's Order denying defendant's Exhibit F, the Doctor's First Report, into evidence is not justified by the case law and that the Opinion on Decision is not supported by the evidence and does not justify the findings of fact.

We have received an Answer from applicant.

The PWCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of defendant's Petition for Reconsideration, applicant's Answer, and the contents of the PWCJ's Report with respect thereto. Based on our review of the record and based upon the PWCJ's analysis of the merits of the petitioner's arguments in the Report, we will deny the Petition as one seeking reconsideration.

## **DISCUSSION**

### **I.**

Preliminarily, former Labor Code section 5909<sup>1</sup> provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

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<sup>1</sup> All section references are to the Labor Code, unless otherwise indicated.

Here, according to Events, the cases were transmitted to the Appeals Board on January 29, 2026, and 60 days from the date of transmission is Monday, March 30, 2026. This decision was issued by or on March 30, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on January 29, 2026, and the cases were transmitted to the Appeals Board on January 29, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 29, 2026,.

## II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian, supra*, at p. 1075 [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’...”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].) Such interlocutory decisions include,

but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ’s determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the PWCJ’s decision includes findings regarding threshold issues as to the existence of an employment relationship between applicant and defendant, that applicant sustained a specific industrial injury to his left hip, cervical spine, thoracic spine, left shoulder, left elbow, and left knee on August 24, 2019, and that applicant sustained another specific industrial injury to his lower back and abdomen on January 2, 2020. Accordingly, the PWCJ’s decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, the defendant challenges 1) the PWCJ’s Discovery Order #1 denying defendant’s petition for an order requiring applicant to execute a social security release, and 2) the PWCJ’s Rulings and Order #9 denying defendant’s Exhibit F, the Doctor’s First Report, into evidence. These are interlocutory finding/orders subject to the removal standard rather than reconsideration pursuant to the discussion above. (See *Gaona, supra.*)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Here, based upon our review and the PW CJ's analysis of the merits of defendant's arguments in the Report, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to defendant.

Accordingly, we deny defendant's Petition.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the PW CJ's decision issued on November 26, 2025 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 27, 2026**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**SOTERO GOMEZ  
CHAIN COHN CLARK  
COUNTY COUNSEL – COUNTY OF KERN**

**JL/abs**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*